

CHAPTER 20: THE ADVANCEMENT OF RELIGION

'The advancement of religion', in one form or another, has been part of charity throughout the history of charity law. However, the scope of what is understood to be a religion and what is included as the advancement of religion has not been without controversy.

What constitutes a religion?

According to Dal Pont, 'for the purposes of charity law, "religion", like education, is defined broadly'.¹ He also notes that:

The principal reason for the breadth of the definition of 'religion' is that it promotes religious liberty which is enshrined in the Australian Constitution...and it is moreover consistent with the law's concern with protecting minorities. The law's protection in this context is *not* directed to safe-guarding the tenets of each religion — *it is accorded to preserve the dignity and freedom of persons to adhere to the religion of their choice.*² (Author's emphasis)

Dal Pont also notes that the broad characterisation of 'religion' requires that boundaries need to be set to ensure that the privileges accorded to charities are not conferred indiscriminately on any group who assert their beliefs, practices and observances to be religious.

Importantly there must be a connection between a person's belief in the supernatural and his or her conduct as a result of that belief. Conduct such as worship, teaching, propagation or observance is religious only if the motivation for engaging in it is religious.³

The most significant Australian authority on the question of what constitutes a religion is the decision of the High Court of Australia in the *Scientology* case which was decided in 1983.⁴ The High Court found Scientology to be a religion. On the question of the current approach to the meaning of religion,

1 Dal Pont, G 2000, *Charity Law in Australia and New Zealand*, Oxford University Press, Melbourne, p 148.

2 Dal Pont, p 149.

3 Dal Pont, p 149.

4 *Church of New Faith v Commissioner of Pay-Roll Tax* (1983) 154 CLR 120.

the *Scientology* case provides the best elucidation and it is worth a detailed consideration here.

The initial decision, made by the Commissioner of Pay-Roll Tax in Victoria, was that Scientology was not a religion. This decision was upheld in the Supreme Court of Victoria and on appeal in the Full Court.⁵ The judgments against Scientology as a religion relied on the premise that Scientology was a philosophy rather than a religion and that the trappings of religion had only been acquired after its establishment in order to give the organisation the semblance of a religion. This assertion was rejected by the High Court. Instead, the High Court supported a broad definition of religion, while cautioning against too broad a meaning. Mason Acting CJ and Brennan J said:

The mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and observances of every kind whenever a group of adherents chose to call them a religion...A more objective criterion is required...We therefore hold that, for the purposes of the law, the criteria for religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.⁶

Wilson and Deane JJ noted that there was no single characteristic which could be used to identify an organisation as constituting a religion and that the most that could be done was to formulate a range of indicia gleaned from past decisions. The indicia of religion as discussed by Wilson and Deane JJ were: that the particular collection of ideas and/or practices involved belief in the supernatural, that is, belief that reality extended beyond that which was capable of perception by the senses; that the ideas related to man's nature and place in the universe and his relations to things supernatural; that the ideas were accepted by adherents as requiring or encouraging them to observe particular practices having supernatural significance; and that, however loosely-knit and varying in beliefs and practices adherents might be, they constituted an identifiable group or identifiable groups.⁷

Murphy J, while agreeing with the outcome proposed by the other judges, expressed a broader view. He said that it was not the role of the courts to pass judgement on the validity of the beliefs of the adherents of a religion. He went on to explain his views about this. An analysis of what he said reveals a

⁵ *Church of New Faith v Commissioner of Pay-Roll Tax* (1983) 1 VR 97.

⁶ (1983) 154 CLR 120 at 132, 137.

⁷ (1983) 154 CLR 120 at 174.

significant difference between his approach and that of the other members of the Court. We ourselves prefer the views of the majority and accept them as determinative of what constitutes a religion in Australia.

The judges in the *Scientology* case, in describing religion, went beyond saying that an organisation would only be a religion if it centred on a belief in a Supreme Being. Mason ACJ and Brennan J concluded that what was required was a belief in a 'supernatural Being, Thing or Principle'. This marked a move from the trend to that date and the trend still in Britain in favour of theism. Picarda notes that 'the theistic theme has always been well to the fore in definitions of religion in American cases. And it has constituted the essence of modern pronouncements on religion in the English courts.'⁸

There are only a small number of cases where the purpose of an organisation was ruled not to constitute a religious purpose or not to be for the advancement of religion. According to Dal Pont, the cases where an organisation is considered not to be a religion tend to concern those organisations that are considered not to be genuine:

A belief or practice cannot be properly characterised as a religion if: first, it is no more than a parody of a religion or a sham; secondly, it is contrary to laws that do not discriminate against religion generally, against particular religions or against conduct of a kind that is characteristic only of religion; or thirdly, it otherwise envisages or promotes conduct that is inconsistent with the prevailing public policy, such as being subversive of morality.⁹

In the *Freethinkers*¹⁰ case and the *Secular Society*¹¹ case, the organisations were considered not to have religious purposes because they worked against already established religions or against the idea of religion. The *Freethinkers* case used the principle that an organisation with a purpose of campaigning against another religion or religion per se cannot itself be a religion. The organisation in this case was a society whose beliefs included that 'science provides for life and that materialism can be relied upon in all phases of society'.¹² The Freethinkers in America were also held not to be a religion.¹³

The objects of the organisation in the *Secular Society* case included to 'promote...the principle that human conduct should be based upon natural

8 Picarda, H 1999, *The law and practice relating to charities*, 3rd edition, Butterworths, London, p 73.

9 Dal Pont, p 149.

10 Re Jones [1907] SALR 1990 (Incorporated Body of Freethinkers of Australia).

11 *Bowman v Secular Society Ltd* [1917] AC 406.

12 Picarda, p 83.

13 *Old Colony Trust Co v Welch* 25 F Supp 45 at 49 (1938), cited in Picarda, p 83.

knowledge, and not upon super-natural belief, and that human welfare in this world is the proper end of all thought and action' and other objects aimed at promoting a secular, non-religious government and education system among other things. Most of the discussion in this case centred on the apparent illegality, at that time in the UK, of an association established with the object of subverting Christianity. Lord Parker stated that:

The abolition of religious tests, the disestablishment of the Church, the secularisation of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath are purely political objects. Equity has always refused to recognise such objects as charitable.¹⁴

Another point of contention concerns cases in which spiritual benefits are restricted to family members or friends; here the common law also says that the necessary public benefit does not arise. However, most cases where the matter has gone against an organisation claiming to be charitable for the advancement of religion have involved the question of a gift to a trust where there has been some dispute as to whether the wording of the deed could possibly allow non-charitable activities to occur and thus render the trust void.

Committee's conclusions

The Committee affirms that 'the advancement of religion' should continue as a head of charity. It is clear that a large proportion of the population have a need for spiritual sustenance. Organisations that have as their dominant purpose the advancement of religion are for the public benefit because they aim to satisfy the spiritual needs of the community. Religious organisations satisfy these needs by providing systems of beliefs and the means for learning about these beliefs and for putting them into practice.

The Committee sees no reason to move away from the decision made by the High Court in the *Scientology* case, that a religion must have two characteristics: belief in a supernatural Being, Thing or Principle; and that there is an acceptance of canons of conduct that give effect to that belief by some part of the community. No submission suggested a different definition of religion.

The Committee considers that there is sufficient guidance within the common law as it now stands to enable appropriate organisations to be included within 'the advancement of religion' head of charity.

14 Picarda, p 83 citing *Bowman v Secular Society Ltd* [1917] AC 406.

Recommendation 14

That the definition of religion be based on the principles established in the Scientology case, namely:

- belief in a supernatural Being, Thing or Principle; and*
- acceptance and observance of canons of conduct in order to give effect to that belief.*

